

WILLEM KUPERS, COMPLAINANT, VS. ATTY. JOHNSON B. HONTANOSAS, RESPONDENT.

A.C. No. 5704. May 08, 2009

Ponente: TINGA, J.

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TINGA, J.:

This administrative case against respondent Atty. Johnson B. Hontanosas was triggered by a letter-complaint^[1] dated April 15, 2002 of complainant Willem Kupers to the Court through the Court Administrator. The Court Administrator referred the letter to the Bar Confidant on April 25, 2002.^[2] On May 7, 2002, the Acting Bar Confidant wrote complainant that for the court to take cognizance of an administrative case against a lawyer, a verified complaint must be filed in nineteen (19) copies together with supporting documents.^[3] Thus, complainant was told to submit an additional thirteen (13) copies of his complaint. On May 25, 2002, complainant complied and submitted an additional thirteen (13) copies of his complaint.

Complainant alleged that respondent^[4] had: (1) prepared and notarized contracts that are both invalid and illegal as these contracts violated the limitations on aliens leasing private lands; (2) served conflicting interests since he performed legal services for adverse parties; (3) refused to furnish copies of the contracts he notarized to the parties thereof; (4) notarized documents without keeping copies thereof and (5) failed to properly discharge his duty to his client Karl Novak, particularly when respondent allegedly refused to accept his dismissal as counsel for Novak, failed to turn over Novak's documents thereafter, handled legal matters without adequate preparation, betrayed Novak's trust and refused to see Novak with a translator of Novak's choice.

Complainant claimed that as counsel for Hans and Vivian Busse, respondent had prepared a memorandum of agreement and a contract of lease between the spouses Busse and Hochstrasser, a Swiss national. Under said agreement, Hochstrasser would lease Vivian Busse's property in Alcoy, Cebu for fifty (50) years, renewable for another fifty (50) years.^[5] Complainant added that respondent had acted despite conflict of interest on his part since the Spouses Busse and Hochstrasser were both his clients. Respondent prepared a similar agreement and lease contract between the spouses Busse and Karl Emberger, a Swiss national, over another parcel of land in Alcoy, Cebu. This time the lease contract was for a period of forty nine (49) years renewable for another forty nine (49) years.^[6] All four (4) documents were notarized by respondent. It was also averred that respondent drafted two deeds of sale over the leased properties of Spouses Busse to Naomie Melchior, a Filipina, and Karl Novak, a German National.

The Court required respondent to comment on the charges.^[7] He answered that if anyone should be penalized, it should be respondent for meddling in the affairs of his clients and otherwise making a mockery of the Philippine legal system by deceitfully passing as material facts opinionated, baseless and false allegations as well as a falsified document.^[8] Respondent also moved that complainant be made to show cause why he should not be cited for contempt.

Complainant filed a reply on November 6, 2002, in which he stated among other things that respondent is like

Pontius Pilatus [sic].[9]

On February 10, 2003, the Court resolved to refer the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[10]

In lieu of hearings, Commissioner Doroteo Aguila required the parties to file their respective memoranda due to the limited time period given by the Court. The parties did. The Commissioner found that respondent had prepared and notarized contracts that violated Presidential Decree No. 471 (P.D. No. 471) since leases of private lands by aliens cannot exceed twenty five (25) years, renewable for another twenty five (25) years.[11] Nonetheless, complainant failed to prove the other charges he had hurled against respondent as the former was not privy to the agreements between respondent and the latter's clients. Moreover, complainant failed to present any concrete proof of the other charges. The commissioner recommended that respondent be suspended from the practice of law for two (2) months.

Upon review, the IBP Board of Governors disregarded the recommendation of the commissioner and dismissed the complaint on February 27, 2004.[12] The Board of Governors ratiocinated that suspension was not warranted since respondent did not really perform an illegal act. The act was not illegal per se since the lease agreement was likely made to reflect the agreement among the parties without considering the legality of the situation. While admittedly respondent may be guilty of ignorance of the law or plain negligence, the Board dismissed the complaint out of compassion.

We reject the Board's recommendation. We stress that much is demanded from those who engage in the practice of law because they have a duty not only to their clients, but also to the court, to the bar, and to the public.[13] The lawyer's diligence and dedication to his work and profession ideally should not only promote the interests of his clients. A lawyer has the duty to attain the ends of justice by maintaining respect for the legal profession.[14]

The investigating commissioner and the IBP Board of Governors both found that the majority of the charges against the respondent lack proof. Our own review of the records confirms that most of the charges are unsupported by evidence. Such charges are simply the unsubstantiated accusations in the complaint with nary a whit of concrete proof such as affidavits of the clients whose trust respondents had allegedly breached.

However, administrative cases against lawyers are sui generes and as such the complainant in the case need not be the aggrieved party. Thus even if complainant is not a party to the contracts, the charge of drafting and notarizing contracts in contravention of law holds weight. A plain reading of these contracts clearly shows that they violate the law limiting lease of private lands to aliens for a period of twenty five (25) years renewable for another twenty five (25) years.

In his defense, respondent avers that the assailed contracts are valid under Republic Act No. 7652 (R.A. No. 7652), entitled "An Act Allowing The Long-Term Lease of Private Lands by Foreign Investors." They add that these contracts should not be viewed purely as lease contracts since they allow the lessor to nominate a Filipino citizen or corporation to purchase the subject property within the lease period. Respondent's defenses are frivolous. Assuming that it can be duly established that his foreign clients are indeed "foreign investors" as contemplated under R.A. No. 7652,[15] said law allows the lease for the original period of fifty (50) years, renewable for another period of twenty five (25) years, well below the periods of fifty (50) years renewable for another fifty (50) years, and forty-nine (49) years renewable for another forty-nine (49) years respectively, stipulated in the two lease agreements.

Respondent, by drafting the questioned lease agreements, caused his clients to violate Section 7 of R.A. No. 7652 which states:

Sec. 7. Penal Provision. — Any contract or agreement made or executed in violation of any of the following prohibited acts shall be null and void ab initio and both contracting parties shall be punished by a fine of not less than One Hundred thousand pesos (P100,000) nor more than One million pesos (P1,000,000), or imprisonment of six (6) months to (6) years, or both, at the discretion of the court:

(1) Any provision in the lease agreement stipulating a lease period in excess of that provided in paragraph (1) of Section 4;

(2) Use of the leased premises for the purpose contrary to existing laws of the land, public order, public policy, morals, or good customs;

(3) Any agreement or agreements resulting in the lease of land in excess of the area approved by the DTI: Provided, That, where the excess of the totality of the area leased is due to the acts of the lessee, the lessee shall be held solely liable therefor: Provided, further, That, in the case of corporations, associations, or partnerships, the president, manager, director, trustee, or officers responsible for the violation hereof shall bear the criminal liability. (Emphasis ours)

In preparing and notarizing the illegal lease contracts, respondent violated the Attorney's Oath and several canons of the Code of Professional Responsibility. One of the foremost sworn duties of an attorney-at-law is to "obey the laws of the Philippines." This duty is enshrined in the Attorney's Oath[16] and in Canon 1, which provides that "(a) lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes." Rule 1.02 under Canon 1 states: "A lawyer shall not counsel or abet activities aimed at defiance of the law or at decreasing confidence in the legal systems."

The other canons of professional responsibility which respondent transgressed are the following:

CANON 15 - A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

x x x

Rule 15.07- A lawyer shall impress upon his client compliance with the laws and the principles of fairness.

CANON 17 - A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

Aside from constituting violation of the lawyer's oath, the acts of respondents also amount to gross misconduct under Section 27, Rule 138 of the Rules of Court, which provides:

SEC. 27. Disbarment or suspension of attorneys by Supreme Court, grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience appearing as an attorney for a party to a case without authority so to do. x x x

The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, we will also not disbar him where a lesser penalty will suffice to accomplish the desired end.

We cannot accept, however, the plea of leniency expressed by the IBP Board of Governors in behalf of respondent. We also find that the suspension for two (2) months recommended by the IBP Investigating Commissioner too light. We find six (6) months suspension to be a sufficient sanction against respondent.

WHEREFORE, respondent Atty. Johnson B. Hontanosas, is found GUILTY of violating the lawyer's oath and gross misconduct. He is SUSPENDED from the practice of law for six (6) months with a WARNING that a repetition of the same or similar act will be dealt with more severely. Respondent's suspension is effective upon notice hereof. Let notice of this Resolution be spread in respondent's record as an attorney in this Court, and notice of the same served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all the courts concerned.

SO ORDERED.

Carpio-Morales,[*] (Acting Chairperson), Velasco, Jr., Leonardo-De Castro,**] and Brion, JJ., concur.

[*] Acting chairperson as replacement of Associate Justice Leonardo Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

[1] Rollo (Vol. 1), pp. 5-6.

[2] Id. at 4.

[3] Id. at 2.

[4] Records (Vol. 1), pp. 5-21, with annexes.

[5] Id. at 21-28.

[6] Id. at 29-34.

[7] Id. at 162.

[8] Id. at 168-216, with annexes.

[9] Id. at 286- 328, with annexes.

[10] Id. at 376.

[11] Records (Vol. V), pp. 72-76.

[12] Id. at 70-71.

[13] *Endaya v. Atty. OCA*, 547 Phil. 314, 329 (2003).

[14] *Santiago v. Fojas*, A.C. No. 4103, 7 September 1995, 248 SCRA 68, 75-76.

[15] See Section 3(1), Rep. Act No. 7652. "Investing in the Philippines" shall mean making an equity investment in the Philippines through actual remittance of foreign exchange or transfer of assets, whether in the form of capital goods, patents, formulae, or other technological rights or processes, upon registration with the Securities and Exchange Commission."

See also Section 5(1) of the same law. "Foreign individuals, corporations, associations, or partnerships not otherwise investing in the Philippines as defined herein shall continue to be covered by Presidential Decree No. 471 and other existing laws in lease of land to foreigners."

[16] RULES OF COURT, Rule 138, Sec. 20(a).

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